



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0246]

Hours of Service of Drivers: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received a joint application from HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc.; and Moran Environmental Recovery, LLC, for exemption from the hours-of-service (HOS) regulations for drivers engaged in providing direct assistance in environmental emergencies or potential environmental emergencies. The applicants request a five-year exemption from the “14-hour rule” for their drivers engaged in responding to environmental emergencies. FMCSA requests public comment on this application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA-2018-0246 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations

Division; Telephone: (202) 366-2722; E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0246), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, “FMCSA-2018-0246” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material

received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The following companies are the applicants for this exemption: HEPACO, LLC; Heritage Environmental Services, LLC; Lewis Environmental, Inc. and Moran Environmental Recovery, LLC. The applicants' total number of commercial driver's license (CDL) holders is approximately 758, and their total number of commercial motor

vehicles (CMVs) is approximately 840. All of these applicants are members of the Spill Control Association of America (SCAA). In responding to emergency incidents, SCAA members work alongside a mix of both private industry and public agencies, and their work often has a direct impact on protection of both public safety and the environment. SCAA advises that the applicants are contractually required to provide direct assistance to responsible parties who are experiencing environmental emergencies or potential environmental emergencies. The applicants define an environmental emergency as a sudden threat to the public health or the well-being of the environment, arising from the release or potential release of oil, radioactive materials, or hazardous chemicals into the air, land, or water. The applicants' employees are hybrid driver/operator/technicians, so the total on-duty time can be a challenge, especially after hours. Other job duties include industrial maintenance, spill response, sampling, lab packing and waste management. With the current driver shortage, obtaining drivers with these additional skills and experience is becoming more problematic.

The applicants are requesting relief from 49 CFR 395.3(a)(2), commonly known as the "14-hour rule." The applicants state that the HOS rules have always been an issue for emergency response companies. The national shortage of drivers, and in their case, drivers with specialized safety and environmental training, has been worsening over the last few years, making this a critical issue. They are requesting this exemption to allow their companies to respond to a release or threat of a release of oil and other hazardous materials. The applicants are requesting relief from this regulation with the following conditions:

- On-duty period would not exceed 4.5 additional hours for initial response;

- Any driver who exceeds the 14-hour period would in no case exceed a total of 8 hours drive time;
- Drivers would not exceed 70 hours on duty in 8 days;
- Drivers would be required to take 10 hours off duty, subsequent to the duty day; and
- All activities would be subject to the electronic logging device (ELD) rule.

According to the applicants, there would be a significant challenge in responding to environmental emergencies if the exemption was not granted. The initial response hours are the most critical in an environmental emergency and the ability to quickly respond is vital. They believe that a tightly managed exemption actually provides a risk averse situation by discouraging potentially unmanaged risk taking. If the exemption is not granted, there could be a disruption of nation/regional commerce activities, including power restoration activities and protection of interstate commerce and infrastructure. Granting the exemption would mitigate public transportation disruptions, much as tow trucks do when moving wrecked or disabled vehicles under 49 CFR 390.23(a)(ii)(3).

IV. Method to Ensure an Equivalent or Greater Level of Safety

The applicants believe that the proposed relief, and the parameters in which their drivers operate, would continue to provide the highest level of safety and compliance, while prudently responding to incidents that threaten public safety and the environment. Safety is always the primary objective and guiding principle of all of the applicant's business activities as demonstrated by the following:

- All applicants have specific policies on "fatigue and journey management."

- Health and safety is paramount for all operations dealing with environmental emergencies and would remain the case when utilizing the exemption.
- Drivers who utilize this exemption may come back into compliance and restart the computation of maximum driving time only after 10 hours off duty which starts at the end of their extended hours period.
- The exemption would not exempt drivers/carriers from the requirements relating to the CDL, drug/alcohol testing, hazardous materials, size and weight, or State/Federal registration and tax requirements.
- The applicants understand the concepts of risk management and mitigation.
- The applicants maintain a multitude of safety, security, annual medical surveillance, and training plans, as well as comprehensive drug and alcohol programs compliant with multiple DOT departments.
- Robust preventative maintenance programs specific to the equipment are in place with each of the requesting applicants.

The applicants believe an equivalent level of safety will be achieved if their drivers/companies are exempt from the requirements as described in this notice. The requested exemption is for 5 years. A copy of the application for exemption is available for review in the docket for this notice.

Issued on: Au

Larry W. Minor,
Associate Administrator for Policy.

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